

J & B MINING CO., INC.

IBLA 82-846

Decided July 15, 1982

Appeal from Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 74295 and A MC 74296.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an

instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: William P. Sargeant, Esq., Phoenix, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of April 30, 1982, served on Quinton V. Hill and Carol S. Hill, the Arizona State Office, Bureau of Land Management (BLM), declared the unpatented Crago #2 and Hillside placer mining claims, A MC 74295 and A MC 74296, abandoned and void because no proof of labor or notice of intention to hold the claim for 1980 was filed with BLM by December 30, 1980, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2. An appeal from that decision has been taken by J & B Mining Company, Inc. ^{1/}

The claims were located in 1962 and 1966. Copies of the location notices and evidence of assessment work were filed with BLM October 12, 1979.

Appellant states, without further proof, that all affidavits of annual labor were recorded in Yuma County, Arizona, and then timely filed in the appropriate office of BLM.

[1] Section 314 of FLPMA requires the owner of a unpatented mining claim located before October 21, 1976, to file with the proper office of BLM, on or before October 22, 1979, a copy of the official record of the notice of location and evidence of assessment work performed on the claim or a notice of intention to hold the claim, and a proof of labor or notice of intention to hold prior to December 31 of each calendar year thereafter. The statute also provides that failure to file such instruments within the prescribed time periods shall be deemed conclusively to constitute an abandonment of the mining claim. If no proof of labor was in fact filed with BLM on or before December 30, 1980, BLM properly deemed the claim to be abandoned and void. Margaret E. Peterson, 55 IBLA 136 (1981). The responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. This Board has no authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

^{1/} We note that the case file contains a copy of an affidavit of annual assessment work filed with BLM by J & B Mining Company, Inc., in December 1981 for a number of claims, including the Hillside claim, A MC 74296. The affidavit states that J & B Mining is the owner of all the claims listed therein.

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate without the regulations. See Northwest Citizens for Wilderness Mining, Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Lynn Keith, supra at 196, 88 I.D. 371-72.

BLM has stated that it has no record of receipt of a proof of labor or of a notice of intention to hold the claims for 1980, and appellant has not shown anything to the contrary. Therefore, it must be found that BLM was not acting improperly in its decision declaring the mining claims abandoned and void under the terms of FLPMA.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

